



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,190	08/23/2006	Johann Wiesmuller	0091-0004	9506
26568	7590	09/10/2009		
COOK ALEX LTD SUITE 2850 200 WEST ADAMS STREET CHICAGO, IL 60606			EXAMINER GWARTNEY, ELIZABETH A	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			09/10/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### **ATTACHMENT TO ADVISORY ACTION**

Applicants' amendment to the claims filed on 08/24/2009 has been fully considered but is denied entry because the amendment raises new issues that would require further search given that such limitations were never previously presented in the claims.

The examiner notes that even *if* the amendment was entered, the invention of claim 23 would be found unpatentable over Lou et al. (US 6,235,274) as evidenced by EVONIK Industries ("Product Information – SIPERNAT<sup>®</sup> D17").

The transitional phrase "consisting essentially of" limits the scope of the a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s) of the claimed invention." *In re Herz* 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976). However, if an applicant contends that additional steps or materials in Lou et al. are excluded by the recitation of "consisting essentially of" applicants have the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicants' invention. *In re De Lajarte*, 337 F.2d 870, 143 USPQ 256 (CCPA 1964) (*see* MPEP 2111.02).

Art Unit: 1794

Note, regarding the rejection of claims 23-33 under 35 U.S.C. §112, first paragraph, applicants submit that the specification provides more than adequate support the limitation "said drink being present at a temperature of at least 40°C.

Applicants' argument is found persuasive and if the amendment was entered, the rejection would be withdrawn.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth Gwartney whose telephone number is (571) 270-3874. The examiner can normally be reached on Monday - Friday; 7:30AM - 3:30PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. G./

Examiner, Art Unit 1794

/KEITH D. HENDRICKS/

Supervisory Patent Examiner, Art Unit 1794